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THE INTERIM

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HELENA, MONTANA

VOL. XII NO. 14

ENVIRONMENTAL QUALITY COUNCIL

EQC to Meet in Capitol...The Environmental Quality Council (EQC) will be holding its next meeting in Helena on Friday, July 28, in the newly renovated State Capitol in Room 172. Set out below are updates and scheduling for the EQC Subcommittees.

To view Council or Subcommittee work plans, agendas, press releases, reports, or minutes from previous meetings, please visit the EQC web site at <http://leg.state.mt.us/services/lepo>. If you have any questions or would like additional information or would like to be placed on the EQC interested persons mailing list, contact Todd Everts by phone at 444-3747 or by e-mail at <teverts@state.mt.us>.

Montana Environmental Policy Act (MEPA) Study...The EQC's MEPA Subcommittee has completed work on its draft report entitled "Improving the Montana Environmental Policy Act (MEPA) Process". The MEPA study was requested by the 1999 Legislature through SJR 18. The draft report, including the draft findings and recommendations, has been available since June 1 on the EQC website at <http://leg.state.mt.us/Services/lepo/index.htm>. The Subcommittee's draft findings and recommendations may be viewed separately from the entire report. Copies of the draft report may also be obtained by contacting the EQC office. Public comments on the draft report are currently being solicited and may be provided to the EQC office through July 5.

Key draft recommendations of the subcommittee include the following concepts.

1. The comment period for draft environmental impact statements (EIS) should be increased from 30 days to 60 days. There should be a 30 day comment period for environmental assessments (EA) unless the agency determines that a public comment period is not



necessary.

2. Permitting processes and MEPA analyses should be conducted concurrently.
3. Agencies should track future MEPA implementation costs and benefits to develop information regarding this topic.
4. Agencies should develop uniform guidelines for identifying project costs which are then used to determine the environmental impact statement costs assessed to an applicant.
5. The EQC should systematically track and report on all MEPA litigation.
6. MEPA implementation training should be provided to MEPA practitioners.
7. The EQC should solicit comments regarding the adequacy of the significance criteria in agency MEPA rules.
8. MEPA rules should include specific public participation objectives.
9. Agencies should develop a consistent and structured approach regarding how they notify the public about MEPA implicated projects or proposals.
10. Public participation should be improved: better notice, improved substantive comments, interactive agency response to comments received, and better public participation processes.
11. Environmental and economic benchmark information should be developed to determine if MEPA is achieving its purpose.
12. Definitions in agency MEPA rules should be clarified.
13. Nonlead agency directors should review and approve any of the staff comments of that agency that an action is significant.

The Subcommittee will meet again at 1 p.m. on Thursday, July 27 in the State Capitol in Room 152. The Subcommittee will be reviewing the comments received on the draft report and finalizing its work prior to presenting the report and its findings to the full EQC on the following day, July 28. The final study report will be provided to the Governor and to the next Legislature by September 30, 2000.

For more information contact Todd Everts at 444-3747 or by e-mail at

<teverts@state.mt.us> or Larry Mitchell at 444-1352 or by e-mail at <lamitchell@state.mt.us>

Water Policy...The EQC's Water Policy Subcommittee is seeking public comment on its draft report *Water Policy 2000*. Comments are due by July 10. The draft report includes a review of the EQC's statutory responsibilities and activities during the 1999-2000 interim, a brief summary of recent court decisions that affect Montana's water policy, background information and analysis of selected issues surrounding the regulation of swine facilities, and draft recommendations. The draft recommendations propose to require financial assurance and individual permits for swine operations with more than 1,000 animal units (2,500 swine larger than 25 kilograms).

After considering public comments, the Subcommittee will make a decision at its next meeting regarding its recommendations to the EQC. The Subcommittee's next meeting will be held in the evening of July 26 in Room 152 of the Capitol.

For a copy of the draft report, visit the EQC web site at <http://leg.state.mt.us/services/lepo> or contact Mary Vandenbosch by phone, 444-5367, or by e-mail, <mvandenbosch@state.mt.us>.

Land Use/Environmental Trends...The Land Use/Environmental Trends Subcommittee is seeking public comment on options to help communities pay for the development and implementation of local growth policies (comprehensive plans or master plans). Options include:

- ▶ appropriating \$2 million each biennium for a grant program to provide matching grants of up to \$50,000 to cities, counties and towns. A portion of the funds would be allocated for grants to rural counties. Options for funding sources include the coal severance tax, including the portion of the coal severance tax that is currently distributed to counties for land planning; the general fund; and a portion of the lodging facility use tax (bed tax) revenue; and
- ▶ authorizing additional options for local governments to raise revenue to pay for growth policies. Options include local option sales tax, local option bed tax, and an exemption from the property tax freeze, possibly in combination with an increase in the special mill levy for planning.

Comments are due by July 10th. After considering public comments, the Subcommittee will make a decision at its next meeting regarding its recommendations to the EQC. The next Subcommittee meeting will be held on the morning of July 27 in Room 152 of the Capitol. For a copy of the draft report, visit the EQC web site at <http://leg.state.mt.us/services/lepo> or contact Mary Vandenbosch by phone at 444-5367 or by e-mail at <mvandenbosch@state.mt.us>.

Eminent Domain...The EQC Eminent Domain Subcommittee held its meeting in Helena on Thursday, May 4 at the Federal Building. The meeting was well attended. This was a work meeting for the Subcommittee which included development of findings and draft recommendations for presentation to the full EQC. The final recommendations will be determined by the Subcommittee at its July 27 meeting, following a public comment period. The public comment period for the draft Eminent Domain Final Report began on June 1, with comments due by July 5. Once the final recommendations are developed, they will be presented to the EQC for review at the July 28 EQC meeting.

If you are interested in viewing a copy of the draft final report, it is posted to the internet website listed below. If you do not have access to the internet or would prefer to receive a hard copy version of the Subcommittee's draft final report, please contact Krista Lee at 444-3957 or <klee@state.mt.us>.

The next meeting of the EQC Eminent Domain Subcommittee will be held on July 27 in Helena. The meeting will start at 1 p.m. and will be held in the State Capitol, Room 172.

To view the minutes from previous meetings, the Subcommittee's work plan, and the draft final report on the eminent domain study, please visit the EQC web site at <http://leg.state.mt.us/Services/lepo/index.htm>. If you have questions or would like additional information please contact Krista Lee at 444-3957 or at <klee@state.mt.us>.

BUSINESS, LABOR, AND AGRICULTURE COMMITTEE

Committee Meets in June...The Business, Labor, and Agriculture Committee met on June 22 to discuss the government competition and privatization bill draft. The Workers' Compensation Subcommittee met on June 23. Look for an update on the Committee's activities in the August issue of *THE INTERIM*.

For additional Committee information contact Gordy Higgins at 444-3064 or by e-mail at <gohiggins@state.mt.us>.

LEGISLATIVE COUNCIL

Council Meets in June...The Legislative Council met June 8 and 9 and considered a wide variety of matters including continued planning for the televising of floor sessions and other legislative meetings, judicial redistricting, land transfers, legislator education, special session matters, and other Council business. Along with the Audit Committee and the Finance Committee, which met simultaneously, three of the four committee rooms created by the Capitol renovation project were

inaugurated.

Orientation Sessions Planned... Tentative plans for orientation sessions prior to the presession caucuses are moving forward. The Council authorized a subcommittee of Rep. Emily Swanson, Rep. Mark Noennig, Rep. Paul Sliter, and Sen. Steve Doherty to continue their work in developing the sessions. Here is a broad outline of the preliminary plan.

Part I. Prospective Candidates and Candidates

Develop brochure: "I'm thinking about running for the legislature. What about .?"

Part II. New Legislators Orientation and Education

Phase 1. "The Basics": November 15-17, 2000

Phase 2. "Hot Topics": First two weeks of session, 2001

Phase 3. "Member to Member Mentoring": appointed at beginning of session.

Part III. Continuing Education for All Legislators

Phase 1. "Law School for Legislators": November 17, 2000

Phase 2. "Advanced Training in Rules": First two weeks of session, 2001:

- protocol of how to run a good committee hearing; and
- House floor rules, when and how to use them (parliamentary procedure)

Phase 3. "Hot topics": first two weeks of session, 2001

After revision, a full discussion draft of the outline will be posted on the legislative branch website in the Legislative Council subcommittee area. Legislator review and comments are encouraged. The Subcommittee is working closely with a committee of the Montana Bar Association to design the "Law School for Legislators" portion of the agenda.

Special Session Report... Not all of the expense bills for the special session have arrived, but adding anticipated expenses for those costs together with actual expenditures, an estimated total cost for the special session is \$202,708. This will allow a reversion of approximately \$224,192, or more than half of the total appropriation. This reversion is possible because the Legislature met for only four instead of the budgeted six days and did not conduct hearings before the session as extensive as were planned. Post session printing will also cost considerably less than what was budgeted. For those who cling to the notion that cost per legislative day means something, a Legislative Services Division report shows a cost of over \$50,000 a day for the special session. Had there been a fifth day, however, it would not have cost that much, as the marginal cost of additional days cannot be calculated that way. Actual final costs for the special session will be known by early

July.

The Council authorized the drafting of two bills as a follow-up to the special session:

- ▶ a bill to authorize standing committees to meet prior to a called special legislative session. Such a bill would cure any potential challenge to the validity of work done by such a committee, promote legislative efficiency, and expand the opportunity for public involvement in the legislative process. All special sessions have benefitted from committee action prior to convening of the Legislature itself, and this bill would be designed to remove any question of authority for continuing these benefits; and
- ▶ a bill authorizing reimbursement of legislators for the day preceding the convening of a session as a legislative day rather than as an interim day. This proposal will significantly reduce processing time and confusion on the part of legislators for cases in which reimbursement is authorized for a day preceding a session. Reimbursement for such days has been very common in the past.

Both of these bills will be considered at the September 15 Council meeting. Your comments are welcome.

Legislative Council on River Governance...The Legislative Council on River Governance is an entity comprised of legislators from Montana, Oregon, Idaho and Washington. Organizational support for the group is provided by CSG-West. The Council grew out of a concern by legislators in Oregon and Washington that there needed to be more legislative involvement in the development of policy relating to the future of the Bonneville Power Administration and the management of the Columbia River in general. Specific concerns were related to work being done in concert by the governors, Indian tribes, and the federal government under the aegis of the "three sovereigns". While overall organization and overall direction has been unclear since inception in the spring of 1998, Montana legislators participating in meetings have nonetheless believed it vital to maintain a seat at the table. To help firm up Montana's organizational relationship to the group, the Legislative Council determined that legislators currently regarded as members will continue to serve but that beginning with the start of the next session, the Speaker and the President along with the minority leaders in each house will each appoint one delegate to serve a 2-year term on the River Governance Council. The Legislative Council will also support a budget for funding this and other interstate activities in the next biennium. Current members, not all of whom are active, are Representatives Aubyn Curtiss, Larry Grinde, Monica Lindeen, Bill Tash, and Steve Gallus and Senators Tom Beck, Steve Doherty, and Bea McCarthy.

Budget Issues...The Council approved allocations of additional interim budget to the Law, Justice, and Indian Affairs Committee (\$8,000) and to the Council's

Public Information Subcommittee to develop a demonstration of the use of TV in the Capitol (\$40,000).

The Council also approved preparation of an interim budget that provides, in addition to the current law budget of full dues for NCSL, full CSG dues and a travel budget for legislator participation in these organizations. Support for these activities in the Legislature will be required, but Council members believe this is a part of legislator training that is more crucial than it has ever been with the large turnover being experienced.

A preliminary budget for information technology also was reviewed. Additional technology for legislators may require additional funding in this area. This will take considerable vision as planning and budgets for the 2003 session must be considered now and in the next session.

Executive Director Search... The Personnel Subcommittee conducted interviews on June 12 and 13 with nine of the candidates for the position of executive director. The Subcommittee intends to select three to four candidates from among these nine for a final interview with the full Legislative Council on July 31. Current executive director, Bob Person, will remain on the job until the end of December.

Land Transfers... The Land Board consulted with the Legislative Council on the transfer of armory property in Plentywood to the City of Plentywood and preliminarily on the lease or transfer of a building at Warm Springs for use as a jail facility. The Council also asked for an update on how nontrust property inventory work is going. The Warm Springs issue may be considered further at the special meeting set for July 31.

Judicial Redistricting... The Council heard a presentation on the judicial redistricting study required by House Bill No. 339. The information presented included preliminary 1999 caseload filing and disposition information from the State Court Administrator, county population estimates, use of alternatives, travel information, and District Court judge service statistics. The Council decided that there was sufficient information to proceed with developing proposed redistricting plans. The members proposed that the Judicial Redistricting Subcommittee meet to select a presiding officer and to discuss a potential redistricting plan with a small group of district judges in order to prepare for a potential in-depth proposal to the Montana Judges' Conference in October. Members of the Subcommittee are Senators Debbie Shea, Steve Doherty, and Tom Beck and Representatives "Red" Menahan, Paul Sliter, and Mark Noennig. A meeting of the Subcommittee has not yet been scheduled. However, information on the judicial redistricting study can be found on the legislative branch website at <http://leg.state.mt.us/Services/LegCouncil.htm>.

For more information or to be placed on the interested persons' mailing list, please contact Susan Byorth Fox, Legislative Services Division, at 444-3597 or by e-mail at <sfox@state.mt.us>.

To Meet in July and September... The Council will hold a special meeting on July 31 for the purpose of interviewing the final candidates for the position of executive director. The next regular meeting of the Council is scheduled for September 15.

PUBLIC INFORMATION SUBCOMMITTEE

TVX: An Experiment in Public Information & Education... On June 8, the Public Information Subcommittee of the Legislative Council recommended to the Council that it provide the authorization and funding support for supplementing the broadcasting feasibility study mandated by HJR 18 with a demonstration project--TVX-- that will carry through the remainder of the 1999-2000 interim and during the 2001 Legislative Session. Subcommittee members explained that the installation of a closed circuit cable TV system as part of the Capitol restoration affords the Council an unexpected opportunity to "show and tell" the look and sound of gavel-to-gavel coverage and other public affairs programming to the Legislature as a whole. In addition, the relatively low cost and effectiveness of video streaming to desktop computers, using the same signal generated by the cable system, would allow for a dual track (TV and intranet) test run of electronic infrastructure in the Capitol complex.

Through a series of motions, the Council members resolved to:

1. authorize going forward with the experimental phase of dual-track broadcasting;
2. commit up to \$40,000 of available funds to the project (based on a preliminary budget prepared by staff);
3. allocate requisite staff time and resources to conduct the experiment; and
4. submit a Committee bill draft request for enabling legislation and appropriations to expand the broadcasting service to statewide audiences.

The funding for TVX will provide for the placement of television monitors in the Capitol, a video streaming consultant, a contract production crew for the duration of the 2001 legislative session, the rental of some mobile camera equipment to capture selective hearings, and some sound and lighting enhancement components if necessary.

The legislative package will be outlined for presentation and discussion at the Council's next meeting, scheduled for September 15. The substance of the draft legislation will address program governance (e.g., whether it will be produced by in-house personnel or a non-profit contractor and under what "rules of engagement" for camera operators), whether program content will be shared with public and commercial media organizations, the format for electronic and/or videotape archiving of programs, the authorization of testimony on bills from remote locations (interactive participation), and, most significantly, the amount of biennial appropriations needed to establish a statewide public affairs network.

Programming/Operations...The primary production in this test phase will be gavel-to-gavel coverage of floor sessions in both chambers. Visitors, lobbyists, and staff will be able to view these proceedings at video monitors in the Capitol. A test audience of legislators and staff will also be able to access the program via an intranet connection to their desktop or laptop computers. A number of hearings, press conferences, and other relevant events will be captured and broadcast on a selective basis (with the approval of the Legislative Council), using mobile camera equipment imported into the building. The TVX crew will operate the remote controlled cameras in the House and Senate from the head end facility, located in the chiller plant just east of the Capitol Building. A designated staff research analyst of the Legislative Services Division will manage and coordinate the activity and will be responsible for making program scheduling decisions.

Information Available on Website...Documents describing the Subcommittee's work to date are accessible to internet users at the Legislative Council's home page, located at <http://leg.state.mt.us/Services/LegCouncil.htm>. Paper or electronic copies of these same documents, as well as forthcoming reports, are also available on request from Research Analyst Stephen Maly at 444-3064 or send an e-mail to <smaly@state.mt.us>.

REVISIONS TO INTERIM PROCESSES

Proposals for Improving Interim Processes...Good management practice, if not tradition, has compelled Legislative Services Division (LSD) staff to identify options for legislative consideration that are offered as a means to improving the interim processes. In past years, the options have ranged from revising the interim study polling process to fundamental changes in the structure, duties, and authority of interim committees. During this interim, the LSD staff identified a number of subjects that were considered by the Legislative Council at its meeting on June 8 and 9. Included in this report is a continuation of the custom of continuing introspection of work processes and products and is the starting point for further discussion only.

Considerations and Caveats...It is important to recognize that it is and will continue to be the Legislative Council that has primary responsibility for and control of the aggregate resources upon which the interim committees depend, including staff support (from the LSD) and finances. Additionally, there will be no change in the aggregate number of legislators available to serve on interim committees. Thus, the limitations posed by a fixed number of "warm bodies", both staff and legislators, will not have changed since the consideration and adoption of SB 11 in 1999. Furthermore, by most accounts, SB 11 reforms have proven remarkably successful. Nevertheless, there are a few adjustments that may be desirable and some that are

necessary. The Legislative Council has asked staff to develop formal proposals on the issues that follow.

1. *Require that agency bills or proposals for legislation be reviewed by an interim committee prior to formally being requested.*

RATIONALE: Implements program evaluations and monitoring functions of the interim committees, allows a body of legislators to preview potential agency legislation, and allows a legislative committee to work with an agency to make a proposal most palatable.

IMPLEMENTATION: Amend Council rule and adopt Joint Rule.

HOW IT WOULD WORK: Current Legislative Council rules already provide that "prior to November 1 preceding a regular session, staff may accept requests approved by [Executive Branch] officers as requests of the Legislative Council". The revised Rule would provide that each interim committee schedule a meeting prior to November 1, the sole purpose of which would be to review agency legislative proposals and decide whether or not to formally request them. This would not change the existing interim committee deadlines--all interim committee work, save agency legislative proposal review, would still have to be completed by September 15. The draft review would not need to be incorporated into the committee's final report.

2. *Expand the authority of each interim committee to consider how interim studies requested by resolution and entrusted to it by the Legislative Council best fit into the committee's interim work plans. If an interim study doesn't fit into the work plan, the interim committee should consult with the Legislative Council on overall legislative priorities.*

RATIONALE: Section 5-5-215, MCA, states that "interim committees shall ... conduct interim studies as assigned..." This binds the committees to the decisions made by Legislative Council under 5-5-217, MCA. This proposal for revision would authorize each interim committee to determine how much time, energy, and resources, if any, to devote to each study.

IMPLEMENTATION: Legislation amending sections 5-5-215 and 5-5-217, MCA.

HOW IT WOULD WORK: Section 5-5-215, MCA, would be amended to include among an interim committee's duties and authority the discretion to recommend that an interim study requested by resolution and entrusted to it by the Legislative Council either not be done by that interim committee or not be done at all. The Legislative Council would consider the recommendation and, in

consultation with the interim committee, reassign the study or omit the study from interim consideration.

3. *Develop standard interim committee operating rules.*

RATIONALE: Session standing committees operate under a formal set of rules as does the Environmental Quality Council. As term limits bring more new members to interim committees, rules will become even more important. With standard operating rules, the presiding officer, committee members, staff, agency representatives, and the public would all know what to expect and when to expect it regardless of which interim committee they were serving on or speaking to.

IMPLEMENTATION: Rules adopted by Legislative Council.

HOW IT WOULD WORK: Interim committee rules would be modeled after session standing committee rules (Chapter 30, Joint Rules; Chapter 3, Senate Rules; and Chapter 3, House Rules), operating procedures of the Environmental Quality Council, and other formal authority. Interim committee rules may include:

- ▶ how officers are elected;
- ▶ duties of the officers;
- ▶ public participation;
- ▶ voting/proxies;
- ▶ what a quorum is and when one is needed;
- ▶ subcommittees;
- ▶ what agency monitoring entails;
- ▶ provision for October bill review meeting (see item #1 above); and
- ▶ staff services.

4. *Formally change the name of the Education Committee to the Education and Local Government Committee and amend statute to reflect local government liaison duties.*

RATIONALE: Following the enactment of SB 11, the Legislative Council assigned local government issues and a local government liaison function to the Education Committee. Section 5-5-224, MCA, the Education Committee's enabling statute, should be amended to accurately reflect those additional duties and the Committee's name should be changed accordingly.

IMPLEMENTATION: Amend Section 5-5-224, MCA.

HOW IT WOULD WORK: The Education Committee has been operating as the Education and Local Government Committee (ELG) since those duties were

assigned by the Legislative Council. The operation of the Committee would not be affected by this amendment; it would merely be altering the statute to reflect current duties.

5. *Reestablish a stand-alone committee to serve as a forum for state-tribal relations.*

RATIONALE: SB 11 repealed the statute that enabled the Committee on Indian Affairs and placed the responsibility to provide a forum for state-tribal relations with the Law, Justice, and Indian Affairs Committee (LJIAC). At the time that SB 11 was under consideration by the Legislature, a proposal had been drafted by the Coordinator of Indian Affairs to create a Commission on Indian Affairs. The placement of Indian affairs with LJIAC was intended as a trial measure in light of the possibility that a Commission would be created. LJIAC was chosen as the committee to handle Indian affairs because many of the problems affecting state-tribal relations are jurisdictional in nature and in a legislative session would be likely be addressed by the House and Senate Judiciary Committees. The membership of the LJIAC is drawn from those session committees.

The arena of "Indian affairs" includes a wide range of subject areas, including education, health and welfare, natural resources, criminal justice, and corrections. There has been considerable confusion among committee members, tribal members, and members of the public regarding whether LJIAC was the appropriate committee to address Indian education and public assistance matters, since the LJIAC's primary subject areas are corrections and the courts.

The increasing emphasis on tribal sovereignty and the government-to-government relationship that the state and the tribes share warrant a stand-alone committee to handle the wide range of issues that impact state-tribal relations. Calling this committee the State-Tribal Relations Committee would accurately reflect the function of the committee.

IMPLEMENTATION: Within Title 5, chapter 5, part 2, MCA, establish a State-Tribal Relations Committee and describe the Committee's duties and authority and amend Joint Rules to identify session committees from which members would be selected.

HOW IT WOULD WORK: The State-Tribal Relations Committee would be appointed as other interim committees and would have similar duties and authority. Section 5-5-211, MCA, states that rules must identify session committees from which interim committee members are selected. Given the wide range of tribal issues that this committee would address, rules could

provide that members be drawn from session committees that deal with legal, health, education, and corrections bills. The LSD would provide lead staffing services to the Committee, and the Committee would be funded through the LSD Program 21 budget.

7. *Change the name of the Business, Labor, and Agriculture Committee to the Committee on Economic Affairs.*

RATIONALE: Economics and economic development link all three of the components of the Business, Labor, and Agriculture Committee. Calling it the Committee on Economic Affairs would help maintain a central focus for the entity, while allowing the Committee to explore a wide range of issues. The Committee would serve as a central coordinating body for economic development proposals that involve business, labor, and agricultural interests. The name would provide the Legislature and the public with a more accurate sense of the Committee's priorities.

IMPLEMENTATION: Amend Section 5-5-223, MCA, and draft new language.

HOW IT WOULD WORK: The basic operation of the Business, Labor, and Agriculture Committee would remain unchanged.

8. *Allow an interim committee to create a subcommittee without the approval of the Legislative Council.*

RATIONALE: An interim committee may find a need to create a subcommittee for any number of reasons. Under current law, 5-5-211, MCA, an interim committee may create a subcommittee only if the Legislative Council approves. Due to committee meeting schedules and other factors, the requirement for approval by the Legislative Council is seen as unworkable.

IMPLEMENTATION: Revise 5-5-211 to eliminate the requirement for Legislative Council approval of subcommittees of interim committees.

HOW IT WOULD WORK: Each interim committee would be authorized to create subcommittees to conduct business within the committee's purview and authority.

Summary and Conclusion...The options involving the Education and Local Government Committee; the Business, Labor, and Agriculture Committee; the Law, Justice and Indian Affairs Committee will be presented to those committees, respectively, for review at their summer meetings. In turn, the recommendations of those committees will be presented to Legislative Council at its September meeting.

If you have comments or questions regarding these options or other ideas about

improving the legislative interim committees or processes, please contact Bob Person or Dave Bohyer at the LSD (444-3064) or any member of the Legislative Council.

LEGISLATIVE SERVICES DIVISION

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The following memorandums are available from the Legislative Library:

"Options for Implementing a Competitive Business Environment in Montana: An Outline for Committee Discussion", Report for the Business, Labor, and Agriculture Interim Committee, Gordon Higgins, May 2000

"Creating a Competitive Business Environment", Report for the Business, Labor, and Agriculture Interim Committee, Gordon Higgins, May 2000

"A Review of Privatization Definitions, Options, and Capabilities", Report for the Business, Labor, and Agriculture Interim Committee, Gordon Higgins, May 2000

These memorandums are also available on the legislative branch website at http://leg.state.mt.us/Reports/Interim_Committees/Business/staffreports.htm.

TRANSITION ADVISORY COMMITTEE

TAC Meets in June...The Electric Utility Industry Restructuring Transition Advisory Committee (TAC) held its fifth meeting of the interim on June 23 in the newly restored Capitol Building in Helena. The agenda for the meeting included an overview of "Competitive Transition Charges" (aka stranded costs for consumers in Montana Power Company's Service Territory), a second look at the Regional Transmission Organization (RTO) for the Northwest region, the various consequences arising from the sale of MPC's distribution utility, and updates on the status of the Legislative Council on River Governance, Bonneville Power's multi-year subscription process, and the Montana Electricity Buying Cooperative. The Committee also considered legislative options for the 2001 session, such as changes to the statutes concerning electric cooperatives' provision of service to urban customers, the

taxation of utilities and cooperatives (or payments in lieu of taxes), the Public Service Commission's role re: fitness/suitability/financial capacity of new owner(s) of MPC's distribution system, and default supply definitions and obligations.

A more detailed report of the meeting will be available in the August issue of *THE INTERIM*. For further information, please contact Research Analyst Stephen Maly at (406) 444-3064, or send an e-mail message to <smaly@state.mt.us>.

Internet users are invited to visit the TAC web page at http://leg.state.us/Interim_Committees/TAC. (However, owing to the move back to the Capitol in mid-June, updates to the web page may be delayed. Please call for confirmation of time-sensitive information.)

MENTAL HEALTH MANAGED CARE SUBCOMMITTEE

Subcommittee Meets in June...The Mental Health Managed Care Subcommittee of the Legislative Finance Committee (LFC) met June 7 in Helena. The Subcommittee heard several presentations and began the process of determining recommendations that it will make to the LFC at its October meeting. The next meeting of the Subcommittee will be July 25 in the Capitol Building.

Subcommittee Hears Panel Discussion...The Subcommittee heard a panel discussion about the process of committing adults with serious and disabling mental illness (SDMI) to community services either when released from the Montana State Hospital (MSH) or as opposed to commitment to MSH. Based on panel discussions, the Subcommittee requested that staff prepare draft legislation to clarify the community commitment process and make the process to revoke a community commitment the same as revocation of a conditional release from MSH. These changes are intended to enhance uniform understanding and application of community commitments across jurisdictions within the state.

Medicaid Managed Care...The Subcommittee heard a staff report about Medicaid managed care statutes, which require managed care contractors, Medicaid contractors that assume risk, and potentially other Medicaid contractors to either meet licensure and financial solvency requirements for insurance companies or prove to the Insurance Commissioner why they should not meet such criteria. Statutes also require the Department of Public Health and Human Services (DPHHS) to incrementally implement mental health managed care. The Subcommittee requested that staff prepare draft legislation to clarify which Medicaid contractors should be subject to insurance licensure and financial solvency criteria and to remove the requirement to incrementally implement mental health managed care.

Mental Health Access Plan Claims...The Subcommittee reviewed the cost of

Mental Health Access Plan claims for May and June 1999 when the state assumed the financial responsibility after Magellan terminated the managed care contract. Data provided by Magellan indicates that the state has paid \$11.8 million, while DPHHS data indicates that the state has paid \$12.5 million for that period or \$660,000 more. The number or value of claims still in dispute was not provided due to privacy concerns of contractors involved in claims resolution processes. The Subcommittee requested that DPHHS reconcile the conflicting estimates.

Montana State Hospital...The Subcommittee reviewed the MSH average daily population (ADP), which has increased from an historic low of 144 in January/February to 153 in May. DPHHS staff testified that they expected a natural population of around 150. The 1999 Legislature accepted the executive budget request for MSH, which was based on an ADP of 135. The additional 23 ADP adds costs of \$1 to \$1.75 million general fund based on DPHHS information presented during the 1999 legislative session.

The Subcommittee also reviewed the status of MSH construction. DPHHS did not provide a date when the new facility would be fully occupied. While administrative staff have moved into the new facility, patients have not been moved. The Subcommittee requested that representatives from the Department of Administration report at the July 25 meeting on the status of completion and assessment of penalties against the contractor for the delay.

AMDD Budget Estimates...The Subcommittee reviewed estimates of the Addictive and Mental Disorders Division (AMDD) fiscal 2000 budget. AMDD expects general fund costs to exceed the appropriation by \$3.6 million, a \$2.4 million increase over the projected deficit reported at the March 8 Subcommittee meeting.

AMDD met with mental health services providers June 15 to consider a list of service reductions for fiscal 2001 to bring expenditures in line with appropriations. Potential reductions under consideration are:

- ▶ limiting Mental Health Services Plan (MHSP - 150 percent of poverty population) eligibility or establishing a waiting list for services;
- ▶ elimination of or maximum service limits for out-of-state residential care for children;
- ▶ elimination of or maximum service limits for out-of-home services for children eligible for MHSP;
- ▶ elimination of partial hospitalization services;
- ▶ increasing consumer co-payments;
- ▶ withholding fiscal 2001 provider rate increase;
- ▶ strengthening clinical standards, expanding utilization review, and increasing retrospective review of medical necessity;
- ▶ maximizing Children's Health Insurance Program (CHIP) coverage for children who are eligible for both CHIP and MHSP;
- ▶ developing new community services to divert persons from MSH; and
- ▶ restructuring payment methodologies for selected services, such as case

management.

Staff comments focused on impacts to children's mental health services and cost shifts to other general fund budgets. Some of the proposed reductions to Medicaid out-of-home services for children will shift costs from Medicaid to the foster care, juvenile corrections, and school budgets, since Medicaid is funded 27 percent from the general fund. If Medicaid eligible children continue to receive out-of-state residential care because alternatives are not available in state, the cost will shift from the AMDD Medicaid budget to general fund budgets in other state programs. CHIP is not consistently treated as a prior resource for children eligible for both CHIP and MHSP. So, AMDD might be paying for some mental health services out of the general fund through the MHSP program that could be funded about 20 percent general fund through the CHIP program. Finally, there are no strategies to develop community services to reduce lengths of stay or divert children from placement in more costly out-of-home services similar to the strategy to enhance services to divert adults from MSH.

Compliance with Federal Medicaid Criteria...The Subcommittee heard a staff report on compliance with federal Medicaid criteria with respect to the process followed to implement pilot and demonstration projects. The Health Care Financing Administration has made no compliance determination, but staff raised concerns with the process followed to implement Medicaid funded mental health services pilot and demonstration projects. DPHHS has come into compliance. It implemented pilot services statewide, ended the demonstration project, and rescinded a policy on evaluation and implementation of pilot and demonstration projects that was not in compliance with federal Medicaid regulations. Staff identified one remaining issue in that DPHHS is paying for some costs that are not Medicaid eligible with Medicaid funds. DPHHS has not indicated how it will resolve that issue. The Subcommittee requested that DPHHS develop a management process to ensure that it complies with Medicaid regulations in the administration of Medicaid funded programs and that the policy be presented for review by the LFC.

To Look at Expanding MHSP Services...The Subcommittee directed staff to analyze the cost to increase eligibility for MHSP services above 150 percent of poverty and to review options for co-payments or other means of cost sharing. The analysis will be reviewed at the July 25 meeting.

SDMI Training for Law Enforcement...The Subcommittee also endorsed the Mental Health Oversight Advisory Council recommendation for training and education of law enforcement officers and others who deal with persons with a SDMI. However, the Subcommittee will add a requirement that agencies cooperate in assisting and attending the training. DPHHS included the recommendation in its preliminary budget requests that were reviewed by the Governor's Budget Office. The recommendation asks for 1.0 FTE and operating costs. At this time, the

recommendation cannot be funded within the \$30 million general fund increase allocated to DPHHS by the Governor's Budget Office.

Psychiatric Service Capacity...The Subcommittee heard a DPHHS review of the adequacy of psychiatric service capacity. DPHHS staff said that inpatient hospital psychiatric service capacity is adequate in Montana, but that the distribution of beds is not ideal. In addition, the number of psychiatrists, particularly child psychiatrists, who are willing to treat public system clients is not adequate.

To Hold Two More Meetings...The Subcommittee will hold two more meetings. The next one is scheduled for July 25 in Room 102 of the Capitol, and the final meeting will be held in September. Please contact Lois Steinbeck at 444-5391 or <lsteinbeck@state.mt.us> (e-mail) if you need additional information.

CHILDREN, FAMILIES, HEALTH, AND HUMAN SERVICES COMMITTEE

Committee Meets in June...The Children, Families, Health, and Human Services Committee held a meeting on Wednesday, June 21 in the Capitol Building. The agenda included reports from the DPHHS on its executive planning process, FAIM II, the Montana Dental Access Coalition, the Governor's Council on Families, and the Subcommittee on the Tobacco Settlement, and a briefing on a Legislative Finance Committee staff report on possibilities for the TANF Block Grant. A more detailed report of the meeting will be available in the August issue of *THE INTERIM*.

Final Meeting in August...The Committee has tentatively scheduled its final meeting for August 17. All Committee minutes, reports, and agendas and a link to Montana Dental Summit Information have been posted to the new interim committee website at http://leg.state.mt.us/interim_committees/.

For more information or if you wish to be placed on the interested persons list, please contact Susan Byorth Fox by phone at (406) 444-3597, by e-mail at <sfox@state.mt.us>, or mail to Legislative Services Division, PO Box 201706, Helena MT 59620-1706.

DISTRICTING AND APPORTIONMENT COMMISSION

To Meet in September...The Districting and Apportionment Commission will hold its next meeting in September in conjunction with a training session on the new

software to be used for legislative redistricting. The main topic for the meeting will be the adoption of criteria for congressional and legislative redistricting.

For more information or if you wish to be placed on the interested persons list, please contact Susan Byorth Fox by phone at (406) 444-3597, by e-mail at <sfox@state.mt.us>, or mail to Legislative Services Division, PO Box 201706, Helena MT 59620-1706.

EDUCATION AND LOCAL GOVERNMENT COMMITTEE

Committee Meets in June...The Education and Local Government Committee met in Helena on June 23. Agenda items included a presentation on Indian education by Denise Juneau of the Office of Public Instruction, reports from the Tuition Subcommittee and the Local Government Subcommittee, and staff reports on possible Committee legislation. The Local Government Subcommittee met on June 22 to continue its work on HJR 29 (local government laws) and HJR 38 (salaries of juvenile probation officers). A more detailed report of the Committee and Subcommittee meetings will be available in the August issue of *THE INTERIM*.

For further information about the meetings, please contact Connie Erickson at 444-3064 or by e-mail at <cerickson@state.mt.us>.

LEGISLATIVE AUDIT COMMITTEE

Committee Meets in June...The Legislative Audit Committee met June 8 in Room 172 of the State Capitol. The following reports were presented.

PERFORMANCE AUDITS:

Subdivision Approval Process, Department of Environmental Quality (OOP-01)

A performance audit of the subdivision approval process examined the activities administered under the Montana Sanitation in Subdivisions Act and the Montana Subdivision and Platting Act. Audit work addressed specific areas administered by the Department of Environmental Quality (DEQ). Fieldwork was primarily completed at the county level. Major report recommendations were directed at potential legislative changes. Recommendations include:

- ▶ revising the Sanitation Act to eliminate DEQ's review in the sanitation approval process;
- ▶ redirecting DEQ's role toward technical assistance;
- ▶ enhancing local funding support and establishing fee-setting authority at the

- county level; and
- clarifying review timeframes in the Sanitation Act.

Net Client Hunter Use, Montana Board of Outfitters, Department of Commerce (Limited Scope OOP-09)

Limited scope performance audit work at the Board of Outfitters, Department of Commerce, focused on net client hunter use (NCHU) activity and recordkeeping. NCHU is the maximum number of clients actually served by an outfitter in any single year.

Based on a lack of program administration and documentation, the Board of Outfitters is not meeting legislative intent and statutory requirements. It also appears the Board does not maintain adequate records to provide necessary oversight of the outfitter industry. The Board should take further action to completely meet requirements. The report contains recommendations for improvements including:

- implementing a system for monitoring and reporting on NCHU activity;
- adjusting NCHU according to statute;
- establishing a high priority for NCHU responsibilities;
- developing a system for tracking acreage associated with outfitters; and
- implementing a process to ensure information is accurate and up to date.

Preconstruction Project Delivery Process, Department of Transportation (Contracted 99P-04)

The purpose of the audit was to evaluate the Montana Department of Transportation's (MDT) preconstruction project delivery process in order to identify where the MDT has opportunities for reducing the time and cost of delivery of preconstruction projects while maintaining quality. Four distinct areas were analyzed in the audit: program delivery, project management, environmental process, and preconstruction survey. Overall, the audit found that MDT faces little risk of not delivering the program funded by the Federal Highway Administration (TEA-21). The audit did find that significant time and cost efficiencies could be gained by strengthening the role of project management responsibilities, tools, and procedures with the MDT. Several recommendations were made in this regard. (Note: This audit was completed under a contract with Dye Management Group, Incorporated.)

PERFORMANCE AUDIT FOLLOW-UPS:

Apprenticeship and Training Program, Department of Labor and Industry (original report 98P-06)

In June 1998, the performance audit of the Apprenticeship and Training Program was presented to the Legislative Audit Committee. The report made one recommendation to the Department of Labor and Industry. The report also offered four issues for Department consideration and two funding-related issues for legislative consideration. In its follow-up audit, the Committee found that the

Department had fully implemented the one recommendation that was made. The Committee also found that the Department took action to implement the four issues submitted for its consideration. The 1999 Legislature addressed the other two funding-related issues.

Disaster and Emergency Services, Department of Military Affairs (original report 97P-03)

In January 1998, a performance audit of the Department of Military Affairs, Disaster and Emergency Services Division (DES) was completed. The audit examined the four phases of emergency management: mitigation, preparedness, response, and recovery, as well as the roles and responsibilities of the DES, other state agencies, and local political subdivisions. The audit made five recommendations to the DES. Four of the five were implemented and the fifth is being implemented. By implementing recommendation #5, the DES reduced the area responsibility of the DES district representatives and increased the number of districts from four to six. The other recommendations addressed the scheduling and conducting of local exercises, the development of a state hazard mitigation program, decentralizing earthquake program administration, and DES staff training.

CONTRACT AUDIT:

Montana Medical Legal Panel (00C-01)

Under contract with the Legislative Auditor's Office, Henry Fenton, CPA, conducted the financial-compliance audit of the Medical Legal Panel for the year ending December 31, 1999. The auditor made no recommendations and gave an unqualified opinion on the financial statements presented.

Next Meeting...The next Legislative Audit Committee meeting is tentatively scheduled for November 2000.

LEGISLATIVE FINANCE COMMITTEE

LFC Meets in June...The Legislative Finance Committee (LFC) met in Helena on June 8 and 9 to hear a number of reports and discuss several issues. The meeting, along with simultaneous meetings of the Legislative Audit Committees and Legislative Council, were the first committee meetings held in the newly restored Capitol Building. Key issues discussed are summarized below.

LFD Fiscal Report, May 2000 Special Session...The LFC was presented the Legislative Fiscal Division Fiscal Report for the May 2000 Special Session. The

report contains a summary of the general fund status for the 2001 biennium and a projection for the 2003 biennium, to include special session action. It also includes a summary of each of the bills passed during the special session. The report was mailed to all legislators during the week of June 12.

Information Technology Management Study Governance Recommendations...

The LFC heard and adopted the recommendations of the Information Technology Management Study (IT) Subcommittee for a change in the statutory structure for the governance of state government information technology. The recommendation endorses the establishment of a separate Department of Information Technology to be headed by a Chief Information Officer (CIO) at cabinet level. It also calls for establishment of a user committee to advise the CIO and a legislative oversight function. The LFC also concurred with the Subcommittee recommendation on how to deal with the Unified Computer Budget Summary during the 2001 legislative session. Details on the recommendations of the IT Subcommittee are included in a separate report in this issue.

HB 540 Impact on Local Government and School Districts...

The LFC was presented a report by Jim Standaert, senior fiscal analyst, on the potential fiscal impact of HB 540, which would change the way light vehicles are taxed. HB 540 was passed during the 1999 legislative session and amended by HB 4 in the May 2000 special session. It calls for an initiative to be voted on in November 2000. The report explained the current law taxation and revenue distribution of all motor vehicles, as compared to the changes if HB 540 is passed by the electorate. It discusses some of the complications of certain revenue distribution provisions and provides options for simplification. Copies of the report are available from the Legislative Fiscal Division (406-444-2986) or are available on the internet at http://leg.state.mt.us/reports/fiscal/interim/FinanceCmty_June2000/hb540.pdf.

Flexible Spending of TANF and MOE Funds...

The LFC heard a report by associate fiscal analyst Pat Gervais on flexible spending of the Temporary Assistance for Needy Families (TANF) and state maintenance of effort (MOE) funds. The final TANF rules that were effective October 1, 1999, provide states with the opportunity to use TANF and state MOE funds in new and creative ways to achieve the goals set out in TANF regulations. The report discussed uses that other states have implemented and included uses that could reduce the need for general fund as well as new or expanded uses of the funds.

Department of Corrections Fiscal 2000 Budget Issues...

The LFC heard a report on Department of Corrections budget issues. Lorene Thorson, senior fiscal analyst, provided the LFC with information on the transfer of \$1.3 million between programs to cover increased costs and the policy decisions that were made in an effort to deal with the dynamics of the population served by this Department and the decision to add modified FTE. In addition, the LFC was provided with information on the

potential for a supplemental in fiscal 2001 due to:

- ▶ the cost of the 59.0 modified FTE;
- ▶ the potential for growth in the number of male inmates exceeding projections;
- ▶ the probability that the higher costs experienced in juvenile placement for fiscal 2000 will continue in fiscal 2001; and
- ▶ the Department's decision to seek a pay exception for correctional officers in order to aid recruitment and retention efforts.

"Cat and Dog" Appropriation Bills - Authority for Fund Transfers...Jon Moe, senior fiscal analyst, presented a report on the authority for fund transfers to other purposes of appropriations set aside in a "cat and dog" appropriation bill. There appears to have been a long-standing assumption by fiscal managers and the Legislature that "cat and dog" appropriations are a separate source of appropriation authority that cannot be transferred to fund ongoing program costs. However, a recent legal opinion indicates that that assumption isn't supported by current statute. The report asked the LFC what level of guidance the Legislature wants to provide for "cat and dog" appropriations. After considering statutory changes, the LFC instead voted to have LFD staff track legislation and alert the Legislature to instances when additional language might clarify legislative intent regarding an appropriation.

Long-Range Building Subcommittee Staffing Issues...Taryn Purdy, principal fiscal analyst, presented a report designed to solicit LFC input on possible staffing changes to the Long-Range Planning Subcommittee. The LFC voted to recommend that the LFD continue to dedicate one staff person to the Subcommittee and that the Cultural and Aesthetic grant program be heard in the Education Subcommittee.

Adoption of Metal Mines Performance Bond and State Liability Recommendations...The LFC adopted the recommendations of the Subcommittee on Metal Mine Performance Bonds that includes changes in procedure and statutory amendments to reduce or eliminate state liability. The Department of Environmental Quality worked with LFD staff in developing the recommendations and will provide draft legislation for staff review. Details of the recommendations as adopted are provided in a separate report on the Metal Mine Performance Bond Subcommittee in this issue.

Appropriation Transfers from Fiscal 2001 to Fiscal 2000...The Governor has proposed two transfers of general fund appropriations from the second year of the biennium into the first: \$3.6 million for fiscal 2000 fire costs and \$125,000 in the Montana Historical Society (MHS) to expenses associated with the acquisition of the Robert Scriver collection. The LFC voted to inform the Governor that it found no issues of statutory compliance with the proposed transfer for fire costs, but that the proposed MHS transfer did not appear to meet the statutory requirement that the transfers be made only in the event of an unforeseen and unanticipated emergency.

The decision of whether to approve the proposed transfers lies with the Governor.

To Meet in October... The LFC set its next meeting for October 2 and 3 in Room 102 of the Capitol Building.

INFORMATION TECHNOLOGY MANAGEMENT STUDY SUBCOMMITTEE

Subcommittee Makes Recommendations on IT Governance Changes... The Information Technology (IT) Management Study Subcommittee of the Legislative Finance Committee met on June 7. The Subcommittee spent the entire day considering changes to Montana's current IT governance structure. The Subcommittee worked from a staff report by senior analysts Pam Joehler and Greg DeWitt that includes findings from a study of IT governance structures used by six western states and an evaluation of Montana's current IT governance structure. The report is available on the Legislative Branch website at http://leg.state.mt.us/fiscal/studies/lt/IT_study.htm.

In the end, the Subcommittee voted to recommend the following IT governance changes to the Legislative Finance Committee.

1. The Legislature should enact "legislative guiding principles" statements to steer the development of IT resources in Montana state government.
2. The Legislature should create a Department of Information Technology, using existing staff in the Information Services Division of the Department of Administration. The director of the Department should carry the title and function as the Chief Information Officer (CIO) for the state. The CIO and Department should be responsible for:
 - a. developing and maintaining a statewide strategic IT plan;
 - b. reviewing and approving agency IT plans;
 - c. establishing statewide policies and standards for IT;
 - d. evaluating IT budget requests;
 - e. coordinating the development of shared IT systems and applications; and
 - f. reporting to the Legislature.
3. The Legislature should create an IT board to advise the CIO. The IT board should have its membership and appointing authority included in statute. The IT board should have representatives from

all three branches of state government and include representatives for local and federal government and private industry.

4. The Legislature should accomplish oversight of IT during the interim with an existing interim standing committee and during legislative sessions with the Long-Range Planning Subcommittee.
5. IT related statutes should be consolidated into one section of law and specific content requirements should be codified for agency and statewide IT strategic plans.

The Subcommittee directed staff to draft legislation to implement the IT governance changes and present the draft legislation and Subcommittee final report at the next and final Subcommittee meeting on October 2.

For more information, or if you wish to be placed on the Subcommittee's interested persons list, please contact Greg DeWitt or Pam Joehler by phone at (406) 444-2986, by e-mail at <gdewitt@state.mt.us> or <pjoehler@state.mt.us>, or by mail to the Legislative Fiscal Division, PO Box 201711, Helena, MT 59620-1711.

SUBCOMMITTEE ON STATUTORY APPROPRIATIONS AND DEDICATED REVENUE

Subcommittee Meets in June...The Subcommittee on Statutory Appropriations and Dedicated Revenue met on June 8 to discuss the bed tax, state special revenue accounts where fines and forfeitures are the revenue source, and the fiscal note format.

The Subcommittee discussed the bed tax and compared Montana's tourism expenditures to other states. At this time, the Subcommittee has not determined whether it will make any recommendations to the Legislative Finance Committee (LFC) in regard to de-earmarking the revenue or eliminating the statutory appropriation for this tax. The Subcommittee will also monitor the Future of the Past Committee to determine if that Committee will be recommending any changes to the bed tax.

State special revenue accounts where fines and forfeitures are the revenue source were reviewed, and the Subcommittee voted to recommend the de-earmarking of four accounts. This recommendation will be brought to the LFC at its October meeting.

The Subcommittee also agreed to send a letter to Dave Lewis, Governor's Budget Director, asking him to consider a change in the fiscal note format that would make it more readily apparent when legislation is adding a statutory appropriation or dedicating revenue. The new format would also address whether the statutory

appropriation or dedicated revenue meets the guidelines in statute.

METAL MINE PERFORMANCE BONDS SUBCOMMITTEE

Subcommittee Makes Recommendations...The Subcommittee on Metal Mine Performance Bonds met on June 9 and adopted the following changes and proposed legislation that enacts the required statutory amendments. The Department of Environmental Quality (DEQ) will submit a copy of their draft legislation to Legislative Fiscal Division staff for review.

1. *Allow bonding for unforeseen costs.*

The DEQ is contemplating, among other options, that a contingency factor be added to the calculated bond amount based on risk to pay for unforeseen environmental or reclamation costs.

2. *Require that an increase in bond be put in place immediately.*

The DEQ would like to establish a timeframe for changing a bond amount. DEQ would be required to issue a preliminary bond amount within 30 days of the review. The operator and DEQ would have 60 days to discuss the amount prior to DEQ issuing the final amount. The operator would then have 30 days to post the bond and then could appeal the final amount.

3. *Eliminate the maximum bond on small miners and bond all activity.*

The DEQ proposes to eliminate the \$10,000 maximum bond on placer and dredge mining operations (thus requiring them to bond for the full cost of reclamation), impose a monetary maximum bond on other small miners who currently are not required to post bond, and use interest from the resource indemnity trust for any shortfalls.

4. *Allow a portion of the bond to be retained after reclamation.*

The Legislative Fiscal Committee (LFC) recommends that the DEQ be allowed to retain a portion of the bond after reclamation as a contingency for unforeseen environmental or reclamation costs, but that a reasonable maximum retention time be established. The LFC asked the DEQ to work with the mining industry to determine a "reasonable" time limit and to report back to the LFC with a proposal for further debate.

5. *Review 82-4-360, MCA, to see if it is working as intended;*

bankruptcy.

This section states that a person may not conduct mining or exploration activities in Montana if that person or a business association of that person had a bond forfeited. The LFC asked staff to provide further information to the LFC to determine if the statute is clear enough to carry out legislative intent.

6. *Statutorily require that all bond proceeds and earnings be used for reclamation.*
7. *Submit a copy of the Metal Mine Performance Bonds and State Liability report to the State Auditor and request that the State Auditor review the statute to ensure that the state's interests are protected upon incapacity of a surety due to bankruptcy, default, or revocation of its license and to report the findings to the LFC.*
8. *Provide statutory authority for the DEQ to convert bond money to trust funds.*

These recommendations were considered and adopted by the LFC at its meeting, also on June 8 .

THE BACK PAGE

SUMMER MUSINGS ON COUNTIES, DISTRICTS, AND FROM WHENCE THEY CAME?

Susan Byorth Fox, Research Analyst
Legislative Services Division

INTRODUCTION

On June 6, those choosing to vote visited a voting tabulation district, more commonly known in Montana as a precinct, to vote for candidates in a variety of districts, including legislative and judicial districts. Children go to school in school districts and citizens live in fire districts, water districts, street parking improvement districts, television districts, water conservancy and conservation districts, and grazing, irrigation, and mosquito districts. County commissioners represent commissioner districts. Counties are, after all, the quintessential Montana local government district out of which original townships and road and school districts emanated.

COUNTY-SPLITTING

Montana began statehood with 16 counties that the Legislature subdivided from the original territorial 9. Each county received one senator (1889 Montana Constitution Art. VI, sec. 4) and representatives based originally upon population. In 1911, legislation (Ch. 112) was enacted allowing counties to be created by petition and election. From 1910 to 1925, 28 additional counties were formed (Waldron, p. 73; Malone, p. 252).

One intent of this legislation was to accommodate railroads, homesteaders, and the national Homestead Act in growth and development (Lynch, p. 14). One consequence: a total of 56 counties. The ability to create new counties was a boon to rural communities originally when there was sufficient tax bases to build courthouses and create new jobs paid for by new property taxes.

By 1927, the existing counties were created by either the Constitution, by legislative statute, or by voter petition and election. Later counties were created with few parameters, such as square mileage, proximity of a county seat to a new boundary, and a limit to the cannibalizing allowed from the existing county (L. 1911, ch. 112; Waldron, p. 73). The creation of new counties was built less on logic than on hope and aspirations of building a new western empire.

Today, although not as devastating as during the Depression, rural taxpayers support a legacy of county local governments and district courts on declining population and property tax bases. Of the 56 counties, based on 1999 population estimates, two have less than 1,000 persons, and an additional 21 counties have less than 5,000 persons who must support a county government. Symbolic of Depression-era hindsight, consolidation of counties has been provided for by law since 1937. The last big push for consolidation was in the 1980's but was unsuccessful then and unlikely to be popular now.

LEGISLATIVE APPORTIONMENT

Since legislative representation was originally based upon existence of a county, rural counties gained great influence compared to their proportion of the population. Some of the House members represented multicounty districts (1889 Const. Art. VI, sec. 6). Districts were required to be composed of whole counties and when counties were combined, the district was to be as contiguous and compact as possible (1889 Const. Art. VI, sec. 3). Originally there were 16 senate districts, each composed of a single county and each new county was entitled to a senator (1889 Const. Art. VI, sec. 4).

By 1927, Montana had 56 counties, ergo 56 senators, in addition to 102 representatives. However, the urban influence was in decline. By the 1960's, the rural vote controlled the Senate with the ability of 16% of the population to elect a majority of the senators; and in the House, 37% of the population could elect a majority of the representatives (Lopach, p. 65+). This circumstance is termed "malapportionment" and was a harbinger of changes needed in districting as Montana reflected what was happening across the country. A series of 1964 U.S. Supreme Court decisions involving Georgia districts triggered the Voting Rights Act of 1965 (Voting Rights Act), which embodied the concept of the Fourteenth Amendment, "one-person, one-vote".

The Voting Rights Act was later amended further to specifically protect minority voting rights, because as redistricting occurred in response to court decisions, certain groups beyond those represented in the rural/urban split found themselves not being districted in a manner that allowed them the opportunity to elect persons of their choice. At first minorities were seen in specifically racial terms, mostly African-American as a result of the Jim Crow laws and tenacious traditions that survived reconstruction after the Civil War. But there were other ethnic groups and language minority groups, including Montana's American Indian population, whose rights also need protection. Subsequent amendments to the Act soon clarified that these other groups are protected, too.

The Legislature responded and attempted to redistrict itself in 1965. The attempt

failed and the U.S. District Court reapportioned the Legislature of 55 senators and 104 representatives by combining counties and creating numerous multimember districts. These districts existed until 1971, when the Legislature's attempt at redistricting was rejected by the courts, although a subsequent plan from a second special session was accepted. This plan had 50 senators and 100 representatives, but still utilized multimember districts in the process. The Constitutional Convention members were elected under the new 100 house districts and during the convention chose a new method for redistricting the legislative and congressional districts.

The 1972 Montana Constitution created a Districting and Apportionment Commission of nonlegislators that removed the responsibility of redistricting from the Legislature's arena. In 1974, the first Commission redistricted 50 senators and 100 representatives into newly constitutionally-required single-member districts.

CONGRESSIONAL APPORTIONMENT

Districting also occurs for congressional districts. Montana gained its second congressional seat in 1913 and kept it until 1992. The apportionment of seats in Congress is based on population with the exception that each state receives at least one representative. Montana hopes to regain its second seat and would be the first state to ever do so.

Legislative and congressional districting are conducted by the Districting and Apportionment Commission with staff support from the Legislative Services Division. The numbers of legislative districts are limited by parameters set in the Constitution and statute and determined by the Districting and Apportionment Commission. Certain districts under the redistricting plan from the 1990 round remain under appeal in a voting rights case at the federal District Court level even as the 2000 Commission prepares to begin its work.

The Voting Rights Act triggered the unthinkable proposition that each county does not deserve a senator and a representative, per se, based simply on the existence of a local government. That change reversed the trend from the earlier part of the century and brought about the transfer of power from rural eastern Montana to urban western and southcentral Montana where the bulk of the population lived.

COUNTY COMMISSIONER DISTRICTS

Changes spurred by the Voting Rights Act are continually being interpreted and slowly institutionalized in areas such as congressional and legislative redistricting. Counties are now receiving greater scrutiny for election practices concerning county commissioner districts. The legal arena is where the reality is being tested and

moving understanding along.

Montana statute requires commissioners to represent specific districts "as compact and equal in population and area as possible" (7-4-2102, MCA) but requires at-large or county wide voting, which has led to complaints invoking the Voting Rights Act of 1965. Statutory changes are being discussed for the 2001 Legislature, but the current debate is not new. Big Horn County was required to hold county commissioner district elections by district following the 1986 *Windy Boy v. County of Big Horn* (647 F. Supp. 1002) lawsuit. Roosevelt and Rosebud Counties are currently in negotiation to resolve issues without further litigation, but Blaine County seeks to defend its districts in court. Even with the guidance of federal law, redistricting litigation, especially in the last decade, constantly refines the parameters and sets new precedents under which redistricting occurs.

JUDICIAL DISTRICTS

Judicial districts have followed the path of counties by subdividing into new districts, most recently by a change in the 1999 session. Like legislative redistricting, some criteria on which the creation of districts was to be conducted was set forth in the 1889 Montana Constitution. It provided the Legislature the authority to create new districts and to increase or decrease the number of judges, although each district must have at least one judge (1889 Mont. Const., Art. VIII, sec. 14). Districts were to be compact and bounded by county lines. Originally, there were 8 judicial districts (1889 Mont. Const., Art. VIII, sec. 13) and currently there are 22. In reviewing 1999 caseload statistics, there appears to be a malapportionment of workload currently among the various districts, and currently a legislative study is being conducted to determine whether further judicial redistricting should occur.

The realities of county funding, and specifically judicial district court funding, are also being explored at this time. The interaction between county and state funding and the respective roles of the state and county in regard to funding in general, and funding district courts specifically, are being explored in various executive branch studies. There are recommendations being considered for the 2001 legislative session with the possibility of a significant change in which the state would assume the funding responsibility for district courts. Other recommendations on streamlining funding of other county services is also being considered.

CONCLUSION

The legacy of expansion as evidenced by county creation has reached a turning point. Counties were created and became the bases for many of the other existing districts, including legislative and judicial districts. Although legislative redistricting

law has been developing and maturing since 1965, and is informed by provisions in the U.S. Constitution, federal law, and legal precedent, controversy and differing interpretations are the norm and litigation a constant. Judicial redistricting shares some of the same basic structural requirements for redistricting, but the bases for redistricting is much simpler, not representation but access to and the administration of district courts.

Counties have indeed been the building block for local identity as well as government administration. Still, can the former assumption for the existence of counties remain the same as in the early part of the 20th century? It will be interesting to see what the future will hold. Counties, the basic building blocks of state government, may be explored in a different light, ultimately evolving as their progeny of legislative districts has evolved over the past 35 years, and as judicial districts may currently evolve.

Lopach, James Ed. *We the People of Montana...The Workings of a Popular Government*. Missoula: Mountain Press Publishing Company. 1983.

Lynch, Neil J., *Montana's Legislature Through The Years*. 1977.

Malone, Michael P, Richard B. Roeder, and William L. Lang. *Montana A History of Two Centuries*. Seattle; University of Washington Press. Rev. ed, 1991.

Waldron, Ellis and Paul B. Wilson. *Atlas of Montana Elections 1889-1976*. Missoula; University of Montana. 1978.



INTERIM CALENDAR

UNLESS OTHERWISE SPECIFIED,
ALL ROOM DESIGNATIONS ARE IN THE CAPITOL BLDG.

JULY

July 25, Mental Health Managed Care Subcommittee, Room 102, 8:30 a.m.

July 26, Water Policy Subcommittee, Room 152

July 27, Land Use/ Environmental Trends Subcommittee, Room 152, morning

July 27, MEPA Subcommittee, Room 152, 1 p.m.

July 27, Eminent Domain Subcommittee, Room 172, 1 p.m.

July 28, EQC, Room 172

July 31, Legislative Council (interviews with finalists for position of executive director)

AUGUST

August 2, 3, and 4, State Administration, Public Retirement Systems, and Veterans' Affairs Committee

August 17, Children, Families, Health, and Human Services Committee

SEPTEMBER

September 4, Labor Day, holiday

September 14-15, State Administration, Public Retirement Systems, and Veterans' Affairs Committee

September 15, Legislative Council

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